



POLICE DEPARTMENT

February 11, 2008

MEMORANDUM FOR: POLICE COMMISSIONER

Re: Police Officer Anoopam Attari
Tax Registry No. 921937
Warrant Section
Disciplinary Case No. 82734/07

The above-named member of the Department appeared before me on November 5, 2007, charged with the following:

1. Said Police Officer Anoopam Attari, assigned to the 106 Precinct, on or about August 26, 2006, while off-duty and while being designated Chronic Absent-Category B, requested a sick excusal and did not report for her scheduled tour of duty when said date was her next scheduled tour of duty after having been found fit for duty by the District Surgeon.

P.G. 205-45, Page 2 - ADDITIONAL DATA CHRONIC ABSENCE
CONTROL PROGRAM REPORTING SICK

P.G. 205-01, Page 1 - ADMINISTRATIVE RETURN PERSONNEL MATTERS

The Department was represented by Stephen Bonfa, Esq., Department Advocate's Office, and the Respondent was represented by Michael Martinez, Esq.

The Respondent, through her counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department did not call any witnesses or offer any exhibits because the Respondent stipulated to the following facts:

On August 14, 2006, she reported sick regarding an old line of duty injury. On August 22, 2006, the Respondent was determined to be fit to perform limited duty and she was ordered to return to work in a limited duty status. On August 25, 2006, the Respondent reported sick as a result of the same old line of duty injury. This sick event caused the Respondent to be placed on Chronic Sick Category "B" and she was ordered to report to the Special Medical District. That same day, the Respondent was examined by District Surgeon Dr. Lichtenstein. Dr. Lichtenstein found that the Respondent was fit for limited duty and returned the Respondent to limited duty status. The Respondent then met with Sergeant Jeffrey Rosenthal who instructed the Respondent that because she had been designated Chronic Sick Category "B," if she reported sick prior to the start of her next scheduled tour of duty she would be subject to disciplinary action and possible suspension. The Respondent understood what Sergeant Rosenthal told her.

The Respondent's next scheduled tour was the next day, August 26, 2006. On August 26, 2006, at about 0700 hours, before the start of her tour, the Respondent reported sick. The Respondent called her command from a hospital emergency room to report that she was sick.

On August 27, 2006, the Respondent was examined by District Surgeon Dr. Russell Miller who found that the Respondent was fit to perform limited duty and returned the Respondent to limited duty status.

The Respondent's Case

The Respondent testified on her own behalf.

The Respondent, who has been assigned to the 106 Precinct for the past nine years, testified that on June 6, 2006, while she was assigned as the recorder in a marked patrol car, her vehicle was involved in an accident while pursuing a stolen car. She suffered [REDACTED] injuries and was transported to a hospital. She was on line of duty injury leave from June 6, 2006 until August 14, 2006.

On the morning of August 26, 2006, when the Respondent got up to go to work, she had every intention of reporting on time for her scheduled 0705 to 1540 hours tour of duty, but she experienced pain and felt even worse than she had the day before when she had reported sick. She left her home, which is located [REDACTED] at about 0615 hours. She tried to drive all the way to work. Her normal commuting time from her home to the 106 Precinct was [REDACTED] minutes. As she drove, she continued to experience intense pain and started to feel dizzy. Because she "needed medical help," she decided to drive to [REDACTED] ("the hospital"). It took her five to ten minutes to drive to the hospital. After she entered the hospital's emergency room, she telephoned her command and reported sick. She was not admitted to the hospital, but she was injected with two pain medications. She felt better the next day, August 27, 2006, and she was able to report to her command and work a limited duty tour that day.

The Respondent testified that she is currently attending pain management sessions in lieu of immediate surgery but that about six months ago she was medically approved by the Department to undergo [REDACTED] surgery in an attempt to relieve her [REDACTED] pain.

On cross-examination, the Respondent acknowledged that she had her uniform in the trunk of her car when she left for work on the morning of August 26, 2006, and that she left "around" 0615 or 0630 hours. The Respondent acknowledged that before she diverted from her normal commuting route and started to drive towards [REDACTED] Hospital, she did not pull her car over to the side of the road, she did not call 911 and she did not request an ambulance. She arrived at the hospital's emergency room at 0647 hours. She testified that if she had continued driving to the 106 Precinct she would have arrived there at about 0700 hours. Her personal physician had previously prescribed pain medications for her and she took her pain medications on the morning of August 26, 2006 before she got into her car.

FINDINGS AND ANALYSIS

It is charged that on August 26, 2006, at a time when she was under the sick leave designation of "Chronic Absent-Category B," the Respondent telephoned her command and requested a sick excusal and did not report for her scheduled tour of duty that day even though she was aware that August 26, 2006 was her next scheduled tour of duty after she had been found fit for duty by the District Surgeon.

The Respondent asserted that she had made a good faith attempt to report for her scheduled tour of duty on August 26, 2006, and that she failed to report only because she became physically unable to drive all the way to her command.

The Respondent's assertion that because she was experiencing pain and dizziness as she was driving it became physically impossible for her to continue on to her command is not supported by the record. She testified that she had already driven part of the way from her home toward the 106 Precinct when she diverted to a route that took her to the hospital, that normally her commute to her command took 30 to 45 minutes and that if she had continued driving to the 106 Precinct she would have arrived there at about 0700 hours (for a tour that was to commence at 0705 hours). Since the Respondent acknowledged that she arrived at the hospital at 0647 hours, she arrived there only about 13 minutes before she would have arrived at her command had she continued driving to the 106 Precinct. Also, since she was able to park her car at the hospital and walk into the hospital's emergency room, the record does not support her claim that she had no choice but to drive to the hospital because her pain made it physically impossible for her to drive to her command, park her car and enter her command.

Moreover, although the Respondent asserted that she felt dizzy as she drove to work and that she informed the emergency room's medical staff that she was experiencing dizziness, this claim is not supported by the medical record documenting her emergency room visit which, the Respondent admitted, contains no entry that the Respondent had complained of dizziness. Also, although she consumed prescribed pain medications before she left her home, she acknowledged that when she continued to experience "extreme pain" as she drove, she did not pull her car over to the side of the road to wait and see whether the pain medications would take effect so that she could continue driving to work. It is clear that as she was driving to her command she was not suffering such excruciating pain that she became physically incapacitated because she

continued to be able to operate her vehicle and she did not stop driving until she reached the hospital. Also, even though she testified that as she was driving she believed that she “needed medical help,” she did not request any medical assistance until after she had driven to and entered the hospital.

Based on the above, I reject the Respondent’s claim that she was physically unable to drive all the way to her command, enter the stationhouse and report for duty as ordered. The Respondent offered no convincing explanation for why she did not report to her command as ordered and then inform a supervisor that she was experiencing extreme pain. As a result, I find the Respondent Guilty.

PENALTY

In order to determine an appropriate penalty, the Respondent’s service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

The Respondent was appointed on August 31, 1998. Information from her personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has been found guilty of reporting sick for her next tour of duty after a Department surgeon had ordered her back to work the day before and after she had been informed that she had been designated Chronic Sick Category “B” and that if she reported sick prior to the start of her next scheduled tour of duty she would be subject to disciplinary action.

In Disciplinary Case No. 71643/97, a 15-year officer who had a prior disciplinary record was placed on dismissal probation for one year and suspended for 30 days for

telling his supervisor that he was going on sick report the day after he had been found by a district surgeon to be fit for full duty. The hearing officer in that case found that the Respondent had not made a good faith effort to perform full duty because the officer's subjective claim that he was suffering from a headache was insufficient to establish that he was physically unable to perform even a limited duty assignment.

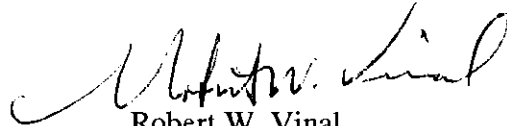
In Disciplinary Case Nos. 74084/99 and 74313/99 a six-year officer forfeited 30 days on suspension and was placed on dismissal probation for calling in sick the day after being found fit for duty and directed to work by a Department psychologist. However, the facts in that case differ from those here because in that case the officer had been on Chronic Sick lists for about half of her tenure with the Department and the officer was also found guilty of being absent from her residence while on sick report without authorization.

In Disciplinary Case No. 80944/05, a 19-year member with no prior disciplinary record forfeited 30 vacation days and 30 suspension days already served and was placed on one year dismissal probation for, while on Chronic B sick leave status, reporting sick for his next tour after a Department Surgeon ordered him back to work. However, the facts in that case differ from those here because the officer in that case had asserted that he was unaware of his responsibilities under the Patrol Guide and the trial commissioner found this professed claim of ignorance unpersuasive and disingenuous.

Here, it is not disputed as a result of a line of duty accident, the Respondent suffered a spinal injury which caused her to suffer neck pain on August 26, 2006. I have also taken into consideration the Respondent's lack of a prior disciplinary record over nearly ten years as a member of the service.

Accordingly, I concur with the Department's most recent penalty recommendation which is that the Respondent be required to forfeit 15 vacation days.

Respectfully submitted,



Robert W. Vinal

Assistant Deputy Commissioner – Trials

APPROVED



RAYMOND W. KELLY
POLICE COMMISSIONER